

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Process Reform for Executive Branch	)	IB Docket No. 16-155
Review of Certain FCC Applications and	)	
Petitions Involving Foreign Ownership	)	

**REPLY COMMENTS OF BT AMERICAS INC., DEUTSCHE TELEKOM, INC.,  
ORANGE BUSINESS SERVICES U.S., INC. AND  
TELEFONICA INTERNACIONAL USA, INC.**

BT Americas Inc.,<sup>1</sup> Deutsche Telekom, Inc., Orange Business Services U.S., Inc.<sup>2</sup> and Telefonica Internacional USA, Inc. (collectively, the Companies) submit these reply comments in response to the Federal Communications Commission’s (FCC or Commission) Notice of Proposed Rulemaking (NPRM)<sup>3</sup> seeking comment on proposed rule and procedural changes designed to improve the “timeliness and transparency” of the Executive Branch agencies’ (referred to as Team Telecom)<sup>4</sup> review of certain applications for FCC authority.<sup>5</sup> The Companies note the overwhelming consistency between its proposals and those offered by other commenters and urge the Commission to adopt those proposals. The Companies also express

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<sup>1</sup> BT Americas Inc. files on behalf of itself and its U.S. affiliates.

<sup>2</sup> Orange Business Services U.S., Inc., files on behalf of itself and its licensed U.S. affiliates.

<sup>3</sup> *In re: Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, Notice of Proposed Rulemaking, FCC 16-79 (June 24, 2016) (NPRM).

<sup>4</sup> The Executive Branch agencies include Department of Homeland Security; the Department of Justice, including the Federal Bureau of Investigation; the Department of Defense; the Department of State; the Department of Commerce, NTIA; the United States Trade Representative; and the Office of Science and Technology Policy (collectively, Team Telecom).

<sup>5</sup> NPRM, ¶ 13.

their support for commenter proposals to eliminate unnecessary information requests and to minimize filing burdens by permitting applicants to certify that required information has been submitted directly to Team Telecom rather than submitting the information to the Commission. Finally, the Companies urge the Commission to reject National Telecommunications and Information Administration (NTIA) proposals that would undermine the streamlined process proposed by the FCC and would re-introduce uncertainty into the Team Telecom review process.

**I. THE COMPANIES SUPPORT COMMENTER PROPOSALS TO FURTHER ELIMINATE UNNECESSARY INFORMATION REQUIREMENTS AND TO PERMIT APPLICANTS TO CERTIFY SUBMISSION OF INFORMATION TO TEAM TELECOM**

In their initial comments the Companies recommended the Commission limit application of the NPRM's proposed additional information requirements directing applicants to provide information regarding an applicant's financial status or regulatory compliance history.<sup>6</sup> The Companies support the proposal of commenters such as CTIA and INCOMPAS that the Commission should adopt further limits on those information requirements. Specifically, the Companies agree that the proposed additional information requirement that applicants explain their "intended overall business model for licensed and unlicensed services in the United States for the next five years" is overbroad and exceeds the scope of the Commission and Team Telecom purview.<sup>7</sup> Changing market conditions in a quickly evolving industry can make it difficult for applicants to forecast a business model five years in advance. Moreover, requiring such information regarding an applicant's unlicensed services is overbroad and would not meaningfully assist Team Telecom in its review.

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<sup>6</sup> See Companies Comments at 13-14.

<sup>7</sup> See e.g., Comments of CTIA at 6-8 (filed Aug. 18, 2016) (CTIA Comments); Comments of INCOMPAS at 10 (filed Aug. 18, 2016) (INCOMPAS Comments).

The Companies also support proposals from commenters such as CTIA, Level 3, and the Telecommunications Companies that applicants be permitted to certify in their applications that the applicant will submit additional information directly to Team Telecom.<sup>8</sup> The Companies opposed the NPRM's proposal that applicants be required to submit responses to the additional information requirements directly to the Commission<sup>9</sup> and urged such information be submitted directly to Team Telecom.<sup>10</sup> The Companies support adoption of the certification option as a means of assuring the Commission that the required information has been provided to Team Telecom. This certification option will avoid burdening Commission staff with a deluge of information and will ensure an applicant's confidential information is provided only to those entities that need to review the information.

## **II. THE COMMISSION SHOULD REJECT PROPOSALS RESULTING IN AN UNLIMITED TEAM TELECOM REVIEW TIMEFRAME**

The purpose of the Commission's NPRM is to improve the Team Telecom review process and the Companies assert that key to that improvement is the creation of certainty in the review process. Accordingly, the Companies urge the Commission to reject NTIA's proposals which, essentially, grant Team Telecom unlimited time for review. NTIA expresses "serious concern" about adoption of a definitive timeframe for Team Telecom's review and asserts it is "imperative that the Executive Branch has all the time needed" to complete its review.<sup>11</sup> While protesting imposition of a review timeframe for Team Telecom, NTIA requests the Commission

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<sup>8</sup> See, e.g., CTIA Comments at 9, Comments of Level 3 Communications, LLC at 14 (filed Aug. 18, 2016) (Level 3 Comments); Comments of Telecommunications Companies at 14-15 (filed Aug. 18, 2016); (Telecommunications Companies Comments).

<sup>9</sup> See NPRM ¶ 18 and Appendix D.

<sup>10</sup> Companies' Comments at 13.

<sup>11</sup> NTIA Comments at 15.

not impose any limitations on the number of extensions Team Telecom may be granted.<sup>12</sup> The Companies urge the Commission to reject NTIA's proposals and, instead, to adopt definitive review timeframes to provide applicants with certainty during the review process. Failing to impose definitive review timeframes will perpetuate the lengthy and uncertain review timeframes currently seen in the Team Telecom review process. Level 3's comments contain a catalogue of numerous egregious Team Telecom review time frames ranging from a low of 43 days for a Zayo/MTS/Allstream application to a high of 357 days for a CWC/Columbus application.<sup>13</sup> Of the 17 recent Team Telecom reviews identified by Level 3, 16 of those reviews took in excess of 100 days and 8 took longer than 150 days.<sup>14</sup>

Similar to the view expressed by the Telecommunications Companies, the Companies are also particularly concerned regarding the potential for unnecessary, and possibly abusive, stopping of the Team Telecom review clock resulting in an indefinite review timeframe.<sup>15</sup> The NPRM proposes applicants respond to follow up questions, and accept or propose counter proposals for mitigation agreements, within seven (7) days of receiving the questions or proposed mitigation agreement.<sup>16</sup> The review clock would be stopped whenever the applicant requested an extension of time to respond to Team Telecom's proposal or follow-up questions.<sup>17</sup> Depending on the number and scope of follow-up questions or on Team Telecom's position regarding provisions required in a mitigation agreements, it is very likely an

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<sup>12</sup> NTIA Comments at 17.

<sup>13</sup> Level 3 Comments, Appendix A.

<sup>14</sup> *Id.*

<sup>15</sup> *See, e.g.*, Telecommunications Companies Comments at 8. ("The Commission should be vigilant against any efforts to extend the 90-day review period through the repeated issuance of follow-up questions with the goal of stopping the clock.").

<sup>16</sup> NPRM ¶¶ 45-46.

<sup>17</sup> NPRM ¶¶ 45-46.

applicant would require one or more extensions of time to respond, thereby repeatedly stopping the review clock.<sup>18</sup> As there are no practical means of limiting or identifying how many follow-up questions or iterations required to reach an acceptable mitigation agreement are reasonable, the review process could continue indefinitely, despite the adoption of a definitive review time period. This ability to stop the review clock permits the exception to swallow the rule, resulting in unnecessarily long review timeframes such as those noted in Level 3's comments.

Commission adoption of the clock-stopping exception or NTIA's request for an unlimited review timeframe both will defeat the Commission's efforts to bring certainty to the Team Telecom review process. Accordingly, the Companies strongly urge the Commission decline to adopt NTIA's proposal and the clock-stopping exceptions.

### **III. COMMENTERS OVERWHELMINGLY AGREE THAT SIGNIFICANT REFORM IS NEEDED TO IMPROVE THE TEAM TELECOM REVIEW PROCESS**

In their initial Comments, the Companies applauded the Commission's efforts to improve the Team Telecom review process and urged the Commission to take a number of measures to reform the review process. A review of the comments submitted in this proceeding revealed that the majority of commenters share the Companies' concerns and expressed similar positions. The Companies recommended the Commission exempt certain categories of applications from automatic referral to Team Telecom review,<sup>19</sup> a proposal found in numerous other comments.<sup>20</sup> Like the vast majority of the commenters seeking certainty in the review

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<sup>18</sup> The proposed new additional information categories may trigger more follow-up questions than applicants have seen in the past as Team Telecom gains visibility into, and seeks to explore, information not previously provided by applicants. *See e.g., nn. 23-24, infra.*

<sup>19</sup> Companies Comments at 3, 7-8.

<sup>20</sup> *See, e.g.,* CTIA Comments at 10; Joint Comments of Hibernia Atlantic U.S. LLC and Quintillion Subsea Operations, LLC at 4-5 (filed Aug. 18, 2016) (Joint Hibernia/Quintillion Comments); Letter to M. Dortch, FCC from A. Fitzgerald, Hogan Lovells at 1 (filed Aug. 18, 2016) (Hogan Lovells Comments); Comments of Sprint Corporation at 5 (filed Aug. 18, 2016) (Sprint Comments); Telecommunications Companies Comments at 9-10;

process,<sup>21</sup> the Companies urged the Commission to adopt a definitive Team Telecom review timeframe with the Companies recommending a 75-day timeframe consistent with the review timeframe utilized by the Committee on Foreign Investment in the United States (CFIUS).<sup>22</sup> The Companies' proposal that any additional information requirements be limited to subjects within Team Telecom's scope of expertise, and exclude subjects such as the applicant's financial information or legal compliance,<sup>23</sup> was also echoed by other comments.<sup>24</sup> The Companies,<sup>25</sup> and other commenters,<sup>26</sup> also urged the Commission to limit the proposed certification requirements with the Companies specifically recommending rejection of data localization obligations which exceed legal requirements and are contrary to United States commerce and trade policy. Finally, the Companies, as well as Sprint, recommended the Commission improve process transparency by identifying contact information for Team Telecom personnel involved in application review.<sup>27</sup>

A review of comments submitted in this proceeding reveals that the overwhelming majority of commenters share similar positions as those expressed by the Companies and the Companies urge the Commission to adopt its proposals.

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Comments of T-Mobile USA, Inc. at 15-16 (filed Aug. 18, 2016) (T-Mobile Comments) and Comments of Verizon at 3-4 (filed Aug. 18, 2016) (Verizon Comments).

<sup>21</sup> See, e.g., CTIA Comments at 4; INCOMPAS Comments at 4-9; Level 3 Comments at 2-7; Comments of the Satellite Industry Association at 3 (filed Aug. 18, 2016) (SIA Comments); Sprint Comments at 2-5; Telecommunications Companies Comments at 5-8; Comments of Telstra at 5-6 (filed Aug. 18, 2016) (Telstra Comments); T-Mobile Comments at 5-8; Comments of TMT Financial Sponsors at 12 (filed Aug. 18, 2016) (TMT Financial Sponsors Comments).

<sup>22</sup> Companies Comments at 11-12.

<sup>23</sup> Companies Comments at 13-14.

<sup>24</sup> See, e.g., CTIA Comments at 6-7; Joint Hibernia/Quintillion Comments at 6; INCOMPAS Comments at 3, 9-11; Level 3 Comments at 18-19; Telecommunications Companies Comments at 11-14; T-Mobile Comments at 8-11; TMT Financial Sponsors Comments at 6-8; Verizon Comments at 5-6.

<sup>25</sup> Companies Comments at 14-15.

<sup>26</sup> See, e.g., CTIA Comments at 11-13; INCOMPAS comments at 12-13; Level 3 Comments at 15-17.

<sup>27</sup> Companies Comments at 16. See also Sprint Comments at 7-8.

#### IV. CONCLUSION

For the reasons set forth in the Companies' initial Comments and these Reply Comments, the Commission should adopt the Companies' proposals identified herein as a means of bringing greater clarity, transparency and certainty to the Team Telecom review process. Moreover the Commission should decline to adopt NTIA's request for an unlimited Team Telecom review timeframe which potentially could undermine the Commission's reform goals by permitting continuation of the existing lengthy and uncertain review process.

Respectfully Submitted,



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*On behalf of BT Americas Inc., Deutsche Telekom, Inc., Orange Business Services U.S., Inc. and Telefonica Internacional USA, Inc.*

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